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STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (JRELK), S/WCI
(MSTAMILLO), L/PM (EPELOFSKY)
NSC FOR AHARRIMAN
OSD FOR ARICCI
CENTCOM FOR CFC-A, CG CJTF-76, POLAD, CSTC-A

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TAGS: [KAWC](#) [MARR](#) [PTER](#) [PGOV](#) [PINS](#) [PREL](#) [AF](#)
SUBJECT: DETAINEE LEGAL FRAMEWORK: GOA PROVIDES PART ONE
OF RESPONSE

REF: A. KABUL 558
[1](#)B. KABUL 369
[1](#)C. STATE 11550
[1](#)D. KABUL 68
[1](#)E. KABUL 5980

Classified By: Political-Military Affairs Counselor Carol A. Rodley; re
asons 1.4(b) and (d).

[1](#)1. (S) As promised (reftel A), on February 19 the GOA provided a written description of the legal framework that will apply to detainees transferred from the Bagram Theater Internment Facility (BTIF) and later possibly from Guantanamo Bay (GTMO) to GOA custody at the Afghan National Detention Facility (ANDF). The official English translation (from the Dari) in paragraph 4 was produced by the Embassy and reviewed by the Afghan Office of the National Security Council (ONSC). Malik Quraishi, Director of Policy and Oversight in the ONSC, provided the final English version to polmiloff on February 24. It was written by one of the signatories, Sayed Zahor Rasoli, Senior Legal Advisor to the National Directorate of Security (NDS), and reflects participation by the NDS, the Ministries of Defense, Interior, and Justice; and the Attorney General's Office. This text constitutes "Part One" of the GOA response. Part Two, a Dari version of which is expected o/a February 28, will address the composition of a GOA review board to assess incoming detainees. Deputy National Security Adviser Engineer Ibrahim Speenzada will also certify that these documents constitute a coordinated GOA response on the detainee legal framework.

[1](#)2. (S) Quraishi agreed to task NDS Legal Advisor Rasoli to follow up Part One with a written assessment of which laws apply specifically to each of the six test cases provided to the GOA (reftel B). Quraishi also confirmed that the Afghan inter-agency legal experts were in accord regarding the 1987 Soviet-era NDS law, which was not cited in the Part One response and is expected to be revised in the future: It would apply in exceptional

circumstances, to include one of the test cases. Polmiloff also raised the issue of Afghan Supreme Court participation in attaining legal consensus. Quraishi advised that when Engineer Ibrahim returns from overseas on February 27, he will ask Supreme Court Justice Azimi to provide a representative for the review board. The GOA will also endeavor to assign a primary and backup representative from each agency represented. Quraishi also confirmed that those appointed to the review board will then be convened by the second week of March to work out with USG representatives specific procedures related to transfers to include transfers of detainee files and the processes listed in paragraph 11 of reftel A.

¶3. (S) Post has heard that the February 7 Deputies Committee directed the initial transfer from BTIF to ANDF to proceed as planned. Part Two of the GOA response will include a request to receive detainee files at a specified time ahead of each transfer so that the GOA can assess each case ahead of the actual transfer of the detainee. CSTC-A advises it has five detainee files translated and ready to transfer to electronic media for delivery to the GoA. These five files as well as the remaining eight files should be ready for delivery not later than five days prior to the physical transfer of the detainees to the GoA. Transfer of the 14th detainee identified for the first group is on hold due to recent surgery. The ANDF is not scheduled to be available for receipt of detainees until 7

March 2007 at the earliest. We remain concerned that adequate translation services and quality control mechanisms do not exist, and this will delay transfer of files to the GOA ahead of the physical transfer of detainees. Efforts must be made to put in place additional quality translation support for the detainee transfers.

¶4. (SBU) Following is Part One of the GOA legal framework response:

In the name of God

Islamic Republic of Afghanistan
Views expressed by the government's assigned delegation regarding the cases (files) of Afghans detained in Guantanamo Bay and Bagram

We are guided by Article (27) of the Afghan Constitution, which clearly states the following, which applies to Afghan detainees in Guantanamo Bay and Bagram:

- No act is considered a crime, unless ruled by a law promulgated prior to the commitment of the offense.
- No one can be pursued, arrested, or detained without due process of law.
- No one shall be punished without the decision of an authoritative court taken in accordance with the provisions of the law promulgated prior to commitment of the offense.

Thus, considering the above referenced article, apprehension and detention of suspects must have taken place in accordance with Articles (7), (8), and (10) of the Discovery, Investigation and Oversight law of the Attorney

General's office, and Article (30) of the Interim Criminal Procedure Code.

Was the apprehension based on prior information, or not?

1. A written or oral complaint or report by the victim, indicating that the person in question committed a crime.

2. A complaint or report by a social organization, agency, or an authorized person.

3. An article or letter published in the media, with regard to the commission of a crime.

4. Confession by the offender.

5. Crime signs witnessed by detection and interrogation agencies.

Also, according to Article (8) of the same law, fill out an apprehension form with orders to search the individual and his home and note all the facts observed at the crime scene, location of the crime being committed, and apprehending authority, identification of the person being apprehended, the reason for apprehension, materials collected as evidence, and have the apprehended person sign the forms. If the person being apprehended does not comply, according to Articles (3), (4) and (5) of the Interim Criminal Procedure Code, all the facts and information recorded by the team are considered to be official.

Conditions for apprehension

Article 10: If the crime being committed is an imprisonable offense, the suspect will be apprehended if:

1. The person is seen while committing the crime, or immediately after the commission of crime.

2. The person is directly identified by the victim or witnesses as having committed the crime.

3. There are indications on his body, clothes, or at his/her home that a crime was committed.

4. There are other indications the suspect has committed a crime such as: intention to escape from the crime scene, or having an unidentified residence or false identity. The period of detention is counted from the time of his/her arrest.

While handling a criminal case, all the proceedings must be conducted by considering the identification of the person through his/her photo, matching all the material collected with photographs taken, and the elements constituting the crime which are material, intellectual and legal elements, as stated in Articles (27), (34), and (37) of the Penal Code published in year 1355(1976). The record with attributed dossier and materials collected from the suspect shall be consolidated according to Article (37) of Interim Criminal Procedure Code, and forwarded to the authorized investigating agency.

Also, in line with Article (36) of Interim Criminal Procedure Code, the process to handle the cases will start upon the transfer of detainees to the Afghan Government. The arresting authority will be responsible for the prior proceedings and detention of the suspects.

If this type of person is sentenced according to existing Afghan laws, time in pre-trial detention will be deducted from the sentence imposed by the court. In cases when judgment and punishment is not conducted according to existing Afghan and international laws, the arresting country will be responsible for the legal issue of confinement (custody and detention) of these people.

Undersigned by:

1. Deputy Minister of Interior for Security, Abdul Hadi Khalid

2. Senior Legal Advisor to National Security Directorate, Sayed Zahor Rasoli

3. Head of Legislation Department of Ministry of Justice, Sayed Yosuf Halim

4. Legal Advisor to Minister of Defense, MG. Mohammad Amin Nooristani

5. Judge Advocate General of the Afghan National Army (ANA), Brigadier General Sher Mohammad Zazai

6. General Prosecutor for National Directorate of Security in Attorney General's Office, Abdul Fatah

7. Assistant Deputy for Intelligence, Ministry of Interior, Jamaluddin

8. Chief Judge, ANA Appeals Court, Abdul Majeed Khawari

9. Head of Legal Services, Ministry of Defense, Major Abdul Qayom

NEUMANN